

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:) Bankruptcy No. 08-18700
)
)
)
JOHN T. KEMP,)
)
Debtor.)
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JOHN T. KEMP,) Adversary No. 08-02448
)
Plaintiff,)
)
vs.)
)
COUNTRYWIDE HOME LOANS, INC.,) Camden, New Jersey
) July 27, 2009
Defendant.) 2:11 p.m.
)
-----)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JUDITH H. WIZMUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For John Kemp: BRUCE LEVITT, ESQUIRE
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1 THE COURT: Kemp.

2 MR. TOBER: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. TOBER: Peter Tober from the firm of Shain,
5 Schaffer and Rafanello on behalf of Chase Home Finance.

6 THE COURT: Yes, I'm puzzled. I guess you might
7 know that there is a corresponding adversary proceeding as
8 well --

9 MR, TOBER: With Countrywide?

10 THE COURT: Yes.

11 MR, TOBER: Yes.

12 MR, TOBER: And that new counsel has come into the
13 case on behalf of the debtor.

14 Is there --

15 COURTROOM CLERK: Somebody should be on Court Call,
16 Bob said.

17 THE COURT: Oh, that answers my --

18 MR, TOBER: I'm sorry, I didn't hear that.

19 THE COURT: There is someone on Court Call.

20 MR, TOBER: Okay.

21 THE COURT: Let's -- thank you --

22 COURTROOM CLERK: Oh, you're welcome, Judge.

23 THE COURT: Let's see if this person represents --
24 hello?

25 OPERATOR: Yes, this is the Court Call operator for

Ruling by the Court

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1 Judge Wizmur's 2:00 p.m. calendar.

2 THE COURT: Yes, indeed. This is Judge Wizmur
3 speaking. Thank you. Hello?

4 MR. LEVITT: Good afternoon, Judge. It's Bruce
5 Levitt.

6 THE COURT: Good afternoon, Mr. Levitt. Yes, we
7 have counsel for Chase here in Court. May I have your
8 appearance?

9 MR. LEVITT: Bruce Levitt on behalf of John Kemp,
10 the plaintiff.

11 THE COURT: Yes, and let me understand, Mr. Levitt,
12 I know you're relatively new to the case and I do have your
13 response in the Countrywide matter, but I don't have a
14 response in the Chase matter. Do you purport to represent the
15 debtor in the Chase matter?

16 MR. LEVITT: Your Honor, a decision has been made --
17 a decision was made not to oppose that motion so no opposition
18 papers were filed.

19 THE COURT: Okay. Well, that makes it easy, doesn't
20 it.

21 MR. LEVITT: That makes it very easy.

22 THE COURT: Your motion is granted. The motion to
23 dismiss the adversary proceeding is granted.

24 MR, TOBER: Thank you, Your Honor.

25 THE COURT: Indeed, I think that there was

Ruling by the Court

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1 substantive basis -- there is substantive basis for this
2 decision as well. I think that -- I wasn't a hundred percent
3 sure about the status of this matter in State Court before the
4 filing of the bankruptcy. There was allusion in your papers
5 to the entry of a foreclosure judgment and actually a
6 Sheriff's Sale.

7 MR, TOBER: And there was, Your Honor. That's
8 accurate. I should have spelled that out more clearly in the
9 papers. This is just an action for the deficiency on the
10 mortgage.

11 THE COURT: Oh. So --

12 MR. LEVITT: Your Honor, it was my understanding and
13 I think my client was a little confused as to whether or not
14 there was a sale scheduled, but I was satisfied that there was
15 a final judgment of foreclosure in the State Court. Under
16 Rooker-Feldman there was a lot I could do to take it much
17 further so I -- that's the reason --

18 THE COURT: Yes, especially in that light. So we
19 will consider the adversary proceeding dismissed.

20 MR, TOBER: Thank you. And just so you're -- I know
21 it's dismissed but for your staff's courtesy, it is scheduled
22 on your calendar tomorrow morning for a trial so I just
23 wanted --

24 THE COURT: Indeed, it is not on for trial.

25 MR, TOBER: Okay. Thank you very much, ma'am.

Ruling by the Court

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1 THE COURT: Thank you. Now, getting to the
2 Countrywide matter, where is counsel for the defendant in that
3 case? Have you been in touch, Mr. Levitt?

4 MR. LEVITT: Your Honor, prior to I guess at the
5 time the matter was adjourned, I was in touch with Ms. Scovish
6 but I have not heard another word, haven't seen any reply to
7 my opposition, and quite frankly, was a little surprised.

8 THE COURT: As I am. I will deny the motion, at
9 least for lack of prosecution if nothing else and I do --
10 you've raised questions about whether the holder of the note
11 has been properly laid out. I'm not sure. This is scheduled
12 for trial tomorrow, is it not?

13 MR. LEVITT: I -- that, Your Honor, I didn't -- if
14 it is, I wasn't even aware of that I guess and it's my fault I
15 guess because of my late entry into the case.

16 THE COURT: I wonder if my memory fails me on this,
17 whether there was a request for adjournment on this.

18 COURTROOM CLERK: Bruce didn't mention it.

19 MR. LEVITT: You know what? I think during -- I did
20 -- the communication I had with Ms. Scovish, Your Honor, was
21 to the effect that we should adjourn the trial also because of
22 the ongoing motions and I had given her my concerns a couple
23 of weeks ago to request an adjournment from Your Honor on the
24 trial. And again, my fault, I should have -- I didn't see any
25 copy of a request and quite frankly, didn't follow up with Ms.

Colloquy

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1 Scovish. But we -- she and I did discuss adjourning the
2 trial.

3 THE COURT: Well, let me do this because I am
4 concerned about moving it. I don't see any value in delay,
5 let me set it for a date certain. We'll put it on for two
6 weeks from now, August 11th at 10:00 a.m. I would appreciate
7 your communication to counsel about the date.

8 MR. LEVITT: I'll do that immediately, Your Honor.

9 THE COURT: And hopefully we'll be able to resolve
10 it at that time.

11 MR. LEVITT: That's fine, Your Honor. I appreciate
12 that. Can I --

13 THE COURT: All right, I thank you.

14 MR. LEVITT: Can I report to her that this motion --
15 her motion was dismissed and we're on for trial on the 11th?

16 THE COURT: That's exactly right.

17 MR. LEVITT: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (Proceeding concluded, 2:16 p.m.)

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C E R T I F I C A T I O N

I, Diane Gallagher, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

 /s/Diane Gallagher November 23, 2010

DIANE GALLAGHER

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